

Statement by the United States at the Meeting of the WTO Dispute Settlement Body

Geneva, November 25, 2015

1. SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB

**A. UNITED STATES – SECTION 211 OMNIBUS APPROPRIATIONS ACT OF 1998: STATUS REPORT BY THE UNITED STATES
(WT/DS176/11/ADD.155)**

- The United States provided a status report in this dispute on November 12, 2015, in accordance with Article 21.6 of the DSU.
- Several bills introduced in the current U.S. Congress would repeal Section 211. Other bills would modify Section 211.
- The U.S. Administration will continue to work on solutions to implement the DSB's recommendations and rulings and resolve this matter with the European Union.

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B. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL PRODUCTS FROM JAPAN: STATUS REPORT BY THE UNITED STATES (WT/DS184/15/ADD.155)

- The United States provided a status report in this dispute on November 12, 2015, in accordance with Article 21.6 of the DSU.
- The United States has addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue.
- With respect to the recommendations and rulings of the DSB that have yet to be addressed, the U.S. Administration will work with the U.S. Congress with respect to appropriate statutory measures that would resolve this matter.

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C. UNITED STATES – SECTION 110(5) OF THE US COPYRIGHT ACT:
STATUS REPORT BY THE UNITED STATES (WT/DS160/24/ADD.130)

- The United States provided a status report in this dispute on November 12, 2015, in accordance with Article 21.6 of the DSU.
- The U.S. Administration will continue to confer with the European Union, and to work closely with the U.S. Congress, in order to reach a mutually satisfactory resolution of this matter.

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D. EUROPEAN COMMUNITIES - MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS: STATUS REPORT BY THE EUROPEAN UNION (WT/DS291/37/ADD.93)

- The United States thanks the European Union (“EU”) for its status report and its statement today.
- As the United States has noted repeatedly since the adoption of the DSB recommendations and rulings in this dispute, the United States remains concerned with the EU’s measures affecting the approval and marketing of biotech products.
- Dozens of biotech applications remain pending in the EU approval system. The ongoing backlog and delays remain a serious impediment to trade in biotech products.
- Further, even when the EU does approve a biotech product, the approval may not apply within one or more EU Member states. Instead, EU Member states have banned such products, and have done so without any apparent scientific basis.
- Instead of taking steps to address this problem, the EU Commission has proposed an amendment to EU biotech approval measures that would facilitate the adoption of additional EU Member state bans on biotech products approved at the EU-level.
- The United States understands that the European Parliament recently sought the withdrawal of this proposal.
- The United States notes with continued concern, however, that the EU Commission has not confirmed that it will discontinue its pursuit of revisions to EU biotech approval measures that would encourage additional Member state bans.
- In closing, the United States urges the EU to ensure that its biotech approval measures are consistent with its obligations under the SPS Agreement. Further, to the extent that the EU considers revisions to its biotech approval measures, the EU should ensure that any revisions are consistent with its WTO obligations and should notify these revisions to the SPS Committee pursuant to Article 7 of the SPS Agreement.

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E. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN SHRIMP FROM VIET NAM (WT/DS404/11/ADD.41)

- The United States provided a status report in this dispute on November 12, 2015, in accordance with Article 21.6 of the DSU.
- As we have noted at past DSB meetings, in February 2012 the U.S. Department of Commerce modified its procedures in a manner that addresses certain findings in this dispute.
- The United States will continue to consult with interested parties as it works to address the other recommendations and rulings of the DSB.

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F. UNITED STATES – COUNTERVAILING MEASURES ON CERTAIN HOT ROLLED CARBON STEEL FLAT PRODUCTS FROM INDIA: STATUS REPORT BY THE UNITED STATES (WT/DS436/14/ADD.1)

- The United States provided a status report in this dispute on November 12, 2015, in accordance with Article 21.6 of the DSU.
- On October 5, 2015, pursuant to section 129(b) of the Uruguay Round Agreements Act (“URAA”), the U.S. Trade Representative requested the U.S. Department of Commerce to issue a determination in the underlying proceeding that is not inconsistent with the findings of the panel and the Appellate Body in this dispute.
- Also on October 5, 2015, pursuant to section 129(a) of the URAA, the U.S. Trade Representative requested the U.S. International Trade Commission (USITC) to issue an advisory report on whether U.S. law permits the Commission to take steps in connection with the underlying proceeding that would render its determination subject to the DSB’s recommendations not inconsistent with the WTO findings.
- On October 23, 2015, the USITC responded in the affirmative.
- On November 6, 2015, the U.S. Trade Representative proceeded to request that the USITC issue a determination in the underlying proceeding that is not inconsistent with the findings of the panel and the Appellate Body in this dispute.
- The United States will continue to work to address the recommendations and rulings of the DSB and to consult with interested parties.

3. UNITED STATES – CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

A. STATEMENTS BY THE EUROPEAN UNION AND JAPAN

- As the United States has noted at previous DSB meetings, the Deficit Reduction Act – which includes a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 – was enacted into law in February 2006. Accordingly, the United States has taken all actions necessary to implement the DSB’s recommendations and rulings in these disputes.
- We recall, furthermore, that the EU, Japan, and other Members have acknowledged that the Deficit Reduction Act does not permit the distribution of duties collected on goods entered after October 1, 2007, over eight years ago.
- We therefore do not understand the purpose for which the EU and Japan have inscribed this item today.
- With respect to comments regarding further status reports in this matter, as we have already explained at previous DSB meetings, the United States fails to see what purpose would be served by further submission of status reports which would repeat, again, that the United States has taken all actions necessary to implement the DSB’s recommendations and rulings in these disputes.
- Indeed, as these very WTO Members have demonstrated repeatedly when they have been a responding party in a dispute, there is no obligation under the DSU to provide further status reports once a Member announces that it has implemented those DSB recommendations and rulings, regardless of whether the complaining party disagrees about compliance.

4. CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES

A. STATEMENT BY THE UNITED STATES

- The United States continues to have serious concerns that China has failed to bring its measures into conformity with its WTO obligations.
- China continues to impose its ban on foreign suppliers of electronic payment services (“EPS”) by requiring a license, while at the same time failing to issue all specific measures or procedures for obtaining that license.
- The United States previously has taken note of an April 2015 State Council decision, which indicates China’s intent to open up its EPS market following issuance of implementing regulations by the People’s Bank of China and the China Banking Regulatory Commission. The United States has also noted that the People’s Bank of China has issued some draft regulations.
- To date, however, the China Banking Regulatory Commission has not issued any draft or final regulations implementing the State Council’s April 2015 decision. Nor has the People’s Bank of China issued final regulations.
- As a result, a single, Chinese enterprise continues to be the only EPS supplier able to operate in China’s domestic market.
- As required under its WTO obligations, China must adopt the implementing regulations necessary for allowing the operation of foreign EPS suppliers in China, and any regulations must be implemented in a consistent and fair way.
- We continue to look forward to the prompt issuance and implementation of all measures necessary to permit foreign EPS suppliers to do business in China.

6. INDONESIA – MEASURES CONCERNING THE IMPORTATION OF CHICKEN MEAT AND CHICKEN PRODUCTS

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY BRAZIL
(WT/DS484/8 AND WT/DS484/8/CORR.1)

- The United States notes that this is the first DSB meeting at which the panel request in document WT/DS484/8, as revised by WT/DS484/8/Corr.1, appears on the agenda.
- While this second document was circulated to Members as a corrigendum, in fact it reflects a change of substance by Brazil to its panel request. Thus, Brazil has in fact revised its panel request as compared to the request that was on the agenda of the October meeting of the DSB.
- We also note that Indonesia has stated that it will not join in a consensus to establish a panel pursuant to the revised panel request contained in WT/DS484/8 and WT/DS484/8/Corr.1.
- Accordingly, under Article 6.1 of the DSU, the revised panel request must be included on the agenda of a second DSB meeting in order for the DSB to establish a panel by negative consensus.

7. REAPPOINTMENT OF TWO APPELLATE BODY MEMBERS

- Mr. Chairman, on behalf of the United States, I would like to join other delegations in congratulating Mr. Bhatia and Mr. Graham on their reappointment.
- The United States would also like to take this opportunity to thank you for organizing a process so that Members could more meaningfully consider the decision proposed and successfully take this decision on reappointment.
- The United States participated in the meetings hosted by the Chair and found it useful in terms of ensuring that Members' views were more fully informed to consider a possible reappointment decision by the DSB.
- I would like to express our appreciation to Mr. Bhatia and Mr. Graham for their willingness to meet with WTO Members, as multiple other AB members have done in the past. In no case did such an Appellate Body Member call into question his or her independence or impartiality by simply talking to WTO Members. To the contrary, we, at least, have confidence that each Appellate Body member is capable of avoiding discussing any issues that would not be appropriate in that context, and even when not chaperoned by multiple WTO Members.
- Such meetings are helpful to WTO Members in carrying out their function under the DSU when reappointment is a possibility.
- The United States considers that for future possible reappointments similar meetings will also prove useful for Members.